



Agricultural Marketing Service

7 CFR Part 1230

[Doc. No. AMS-LP-22-0032]

Pork Promotion, Research, and Consumer Information Order – Decrease in Assessment Rate and Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) thereunder, this rulemaking decreases the current rate of assessment of 0.40 percent of the market value of live porcine animals to 0.35 percent and decreases the amount of assessment per pound due on imported pork and pork products (one- to three-hundredths of a cent per pound). These reductions in assessment rates are made in response to the approximately 47 percent increase in 2021 in the average prices of live hogs above its 3-year average from 2018-2020 and reflect the National Pork Producers Delegate Body's (Delegate Body) desire to lessen the assessment burden on producers and make such funds available to pork producers and the industry. The adjustment in importer assessments also brings the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. This action also updates the Harmonized Tariff Schedule number for prepared or preserved pork in the regulation.

DATES: Effective date: January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Maribel Reyna; Agricultural Marketing Specialist; Research and Promotion Division; Telephone: (202) 302-1139; or Email: Maribel.Reyna@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule does not meet the definition of significant regulatory action contained in section 3(f) of Executive Order (E.O.) 12866 and is not subject to review by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The Pork Promotion, Research, and Consumer Information Act of 1985 (Act) states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Sec. 1625 of the Act, a person subject to an order may file a petition with the United States Department of Agriculture (USDA) stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review the USDA's determination, if a complaint is filed no later than 20 days after the date such person receives notice of such determination.

Executive Order 13175

This final rule has also been reviewed under E.O. 13175, Consultation and

Coordination with Indian Tribal Governments. E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on: (1) policies that have tribal implication, including regulation, legislative comments, or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The Agricultural Marketing Service (AMS) has assessed the impact of this final rule on Indian tribes and determined that this rule will not have tribal implications that require consultation under E.O. 13175. AMS participates on teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the changes to the assessment rate will be relayed through a notice to trade. AMS will work with the USDA, Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the final rule.

Regulatory Flexibility Act and Paperwork Reduction Act

This action was reviewed under the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601 et seq.) in the Order initially published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898). The AMS Administrator determined at that time that the Order would not have significant economic impact on a substantial number of small entities; therefore, a regulatory impact analysis was not required. The Census of Agriculture reports that 64,871 U.S. farms produced hogs and pigs in 2017. Many of those farms are likely to be classified as small business by having total sales less than the \$3.5 million threshold set by the Small Business Administration (SBA) definition (13 CFR 121.201). AMS does not believe that this rule change will have a significant or differential economic impact on small producers because total assessments paid are proportionate to the value of hogs sold by a producer.

This final rule decreases the rate of the assessment from 0.40 percent of the market value of porcine animals to 0.35 percent and decreases the amount of assessment per pound due on imported pork and pork products. While domestic assessments are only made to live porcine animals, assessments on imports are made to both live animal imports and post-slaughter pork and pork products. This update to the regulations updates assessments on the imported product based on the Harmonized Tariff Schedule (HTS) to bring the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals.

From 2018 to 2020, total checkoff revenue ranged from \$72.3 million to \$77.6 million. In that time, 95.6 percent of all revenue was from domestic sales and 4.4 percent was derived from assessments on imported hogs and pork products. Of domestic revenue, 98.6 percent was derived from market hogs and 1.4 percent was derived from feeder hogs. In 2021, total checkoff revenue increased approximately 41 percent to \$103.6 million, an increase primarily reflecting the 47 percent increase in live hog prices¹. Despite the price increase, both the share of all revenue derived from imports and the share of domestic revenue derived from live hogs was mostly unchanged in 2021 relative to previous years.

The assessment decrease reduces annual funding of the promotion, research, and consumer information program by an estimated \$13.5 million under the assumption that 2021 market conditions persist. This decrease reflects both a \$12.3 million reduction in domestic assessments stemming from the 12.5 percent decrease in the rate of assessment for live hogs (i.e., the change from 0.40 to 0.35 percent assessment for live weight hogs), which totaled \$98.4 million in 2021 and a \$1.2 million reduction in importer assessments.

In 2021, the gross market value of all swine marketed in the United States was

¹ Specifically, the Barrow and Gilt National Base Live Equivalent Price (51-52% Lean) rose from its 2018-20 average of \$45.7 to \$67.29 per cwt.

approximately \$27 billion. The assessment decrease reflects the Delegate Body's desire to lessen the assessment burden on producers and make such funds available to pork producers and the industry. The expected benefit of the rule change is savings of \$13.5 million in assessments that would have been paid under the existing rule. The expected cost of the rule is the potential loss of returns accruing to the industry from promotion, research, and consumer information programs paid for by the National Pork Board using assessment funds. While these programs have been shown to earn positive returns in academic studies when considering pre-2021 data, the sharp 2021 increase in assessment revenue is likely to create diminishing marginal returns to advertising.² However, even with the reduction in assessment rates, total program funds will have still increased significantly above 2020 levels owing to the ongoing increase in price levels, assuming the general market conditions of 2021 persist. For these reasons, the economic impact of the assessments is not expected to be a significant part of the total market value of swine. Accordingly, the AMS Administrator determined that this action will not have a significant economic impact on substantial number of small entities.

The information collection requirements have been previously approved by the OMB and have been assigned OMB control number 0581-0093. Reapproval for the information collection will not be necessary since the rate assessment does not substantially change the assessment collection process.

The Act (7 U.S.C. 4801-4819), enacted on December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The final Order at 7 CFR part 1230 establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR

²Kaiser, Harry M. "An Economic Analysis of the National Pork Board Checkoff Program" Publication of the National Pork Board, January 2022

1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29962, 61 FR 28002, 62 FR 26205, 63 FR 45935, 64 FR 44643, 66 FR 67071, 67 FR 58320, and 69 FR 9924) and assessments began on November 1, 1986. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and on imported porcine animals with an equivalent assessment on pork and pork products. However, that rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29962). Further, the rate was decreased to 0.40 percent effective September 30, 2002 (67 FR 58320). The import assessments were decreased by five-hundredths to seven-hundredths of a cent per pound effective April 2, 2004, to reflect a decrease in the 2002 average price for domestic barrows and gilts (69 FR 9924). The total annual assessment rate collected in 2021 was \$103.6 million. Assessments on imported pork and pork products accounted for about \$4.5 million of the total.

The Order requires that producers pay to the National Pork Board an assessment of 0.40 percent of the market value of each porcine animal upon sale (7 CFR 1230.112). However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories (1) feeder pigs, (2) slaughter hogs, and (3) breeding stock. Regulations under 7 CFR 1230.71 specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. Section 1230.71(b) of the Order further provides that for the purpose of collecting and remitting assessments persons engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

Section 1230.110(a) requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.40 percent of the porcine animal's

declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.40 percent of the market value of the live porcine animals from which such pork and pork products were produced.

The Act and Order contain provisions for adjusting the rate of assessment. The Delegate Body has the responsibility to recommend the rate of assessment to the Department. The 2022 Delegate Body, at its annual meeting March 9-11, 2022, in Louisville, Kentucky, voted to recommend to the USDA the rate of assessment of 0.40 percent be decreased to 0.35 percent. In 2022, the Secretary appointed 155 members to serve on the Delegate Body, including 150 producers and 5 importers. At the Delegate Body annual meeting, 145 Delegates were present representing 101,017.5 valid share votes. There were 98,797.6 share votes cast following floor debate of the resolution for the rate assessment reduction. There were 93,151.3 share votes cast in favor of the 0.05 percent decrease in checkoff rate assessment. A simple majority of share votes is required to pass the resolution (7 CFR §1230.36). The assessment rate decrease also applies to the amount of assessment on imported pork and pork products pursuant to the 7 CFR 1230.110.

Methodology and Analysis

AMS weighed the costs and benefits of the change in pork assessment rates, acknowledging the role the Delegate Body plays in the disposition of funds and its insight into the effect of an assessment decrease. The cost of the assessment reduction is the reduced funds available for research, promotion and consumer information of pork and pork products and activities that strengthen and increase demand for live hogs sold by producers paying the assessment. Economic research has shown that such research and promotion programs generally yield positive net returns to producers, a finding confirmed in the National Pork Board's own commissioned evaluation of the program based on data through 2020. While this finding would initially suggest that a reduction in the

assessment would reduce returns to pork producers (and thus fails a cost benefit analysis test), AMS notes the sharp increase in pork prices in the intervening period as a mitigating factor to relying solely on that study.

Between 2018 and 2020, the national barrows and gilt national base live weight equivalent price for 51-51% lean hogs was \$45.69 per cwt on a slaughter of 131.5 million head. In 2021, the price rose 47% to \$67.29 per cwt while slaughter only fell 2 percent to 129.0 million head. Together, these changes have caused checkoff revenue to increase 41 percent between 2020 and 2021. While the reduced assessment will lower expected assessment revenue in future years from 2021, AMS still expects revenue to be greater than the 2018-2020 average in 2022 and in future years owing to the expected continuation of elevated prices.

In its assessments of the costs of the final rule, AMS assumed that demand for hogs and pork products is unchanged in the short run by any reduction in promotion expenditure that may result from the reduced assessment. As such, AMS finds there will be no cost to the final rule change in terms of reduced demand for pork. AMS notes that research and promotion spending is likely to exhibit diminishing marginal returns, meaning that the large increase in promotion expenditure from the 2021 increase in assessment revenue is unlikely to generate economic returns as those returns estimated from data in earlier periods, which started at a lower level³. AMS also notes that the National Pork Board, subject to the Secretary's approval, determines specifically how assessment revenue is spent to promote pork consumption and enhance demand.

³ In the 2021 publication "An Economic Analysis of the National Pork Board Checkoff Program", Kaiser finds that benefit-cost ratios (BCR) for expenditure components of pork assessments to range from 71.58 to 1.37 using data from 1976 to 2020. At the lower bound of that range, the 1.37 BCR value indicates that a dollar invested in promotion raises returns to producer by 1.37. That research also finds that the 90 percent lower bound for the marginal benefit-cost ratio is less one for the category of demand enhancing research (indicating negative producer returns) and between 5 and 7 for pork advertising and non-advertising promotion. These estimates, however, only consider the effects of changing program expenditure by 1 percent. AMS believes that for some promotional activities funded by the checkoff the BCR may fall below one if expenditure increases by 41 percent as it did in 2021.

Subsequently, the National Pork Board is also likely to know the point at which the highest return promotional opportunities have been exhausted and that additional advertising becomes ineffective. Based on its independent analysis of market trends and the research on returns to the pork checkoff program, AMS agrees that this reduction in assessment rate will effectuate the purposes of the Act..

AMS notes that total assessment revenue is expected to remain above the 2020 level despite the assessment rate reduction. On this point, AMS calculated the total reduction in assessment revenue as the sum of the reduction in domestic and foreign revenue. Between 2018 and 2020, about 95.6 percent of assessment revenue was from domestic assessments on live hogs, most of which are market hogs although all types of hogs pay the same assessment rate. AMS estimated the reduction in domestic revenue of \$12.3 by multiplying 2021 domestic revenue level of \$97.3 million by the 12.5 percent reduction in the rate of assessment (i.e., the change in the assessment rate from 0.4 to 0.35 dollars per hundred weight.)

AMS estimated the reduction in import assessment revenue using trade data available from the USDA Foreign Agricultural Service. This data shows that approximately 49 percent of assessment revenue from imports in 2021 was derived from live hog assessments, which, like domestic hogs, will see a 12.5 percent reduction in the rate of assessment. The remaining 51 percent of pork and processed pork products will see variable decreases in the rate of assessments, all of which are larger in magnitude than the 12.5 percent in the live hog rate. AMS calculated the average rate reduction for these pork and processed products to be 38.6 percent based on each product's average value share of imports between 2019 and 2021. AMS then calculated a change in the rate of all import assessments of 25.9 percent, calculated as the sum of the 49 percent revenue share for live hogs times the 12.5 assessment reduction plus the 51 percent revenue share for pork products times the 38.6 percent reduction. Applying the average rate of

assessment to the \$4.53 million in assessment revenue from imports in 2021, AMS found that import revenue will fall by \$1.2 million.

The adjustment in importer assessments will bring the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. Since the original rule was put in place, the wholesale-to-farm price spread for pork has increased from 38.7 percent in 2002 to 74 percent between 2019 and 2021, as report by the USDA Economic Research Service. Other things equal, a widening price spread will cause assessments on finished wholesale products to increase relative to hogs. This rule reduces the assessment rate for imported processed products by 38.6 percent on average but only 12.5 percent for live hogs.

This is not the first reduction in assessment rate for this program. As mentioned above, the program was funded by an initial assessment rate of 0.25 percent. The rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635) and then to 0.45 percent effective September 3, 1995 (60 FR 29962). Further, the rate was decreased to 0.40 percent effective September 30, 2002 (67 FR 58320). The import assessments were decreased by five-hundredths to seven-hundredths of a cent per pound effective April 2, 2004, to reflect a decrease in the 2002 average price for domestic barrows and gilts (69 FR 9924).

From 2012 to current, working off a comparable rate decrease, the Board has continued to build industry initiatives that have long-term return on investment impact for pork producers. Over the years, the Board has initiated several major projects that continue to add value to the industry regardless of budget such as building trust and adding value through a positive image of US Pork, establishing US Pork as the global leader in sustainability agriculture, preventing and preparing for foreign animal diseases, and strengthening state and industry partnerships to build support that keeps people, pigs and the planet as leading fundamentals. Even with the rate reduction, AMS has no reason

to believe that the Board cannot effectively continue its goal to develop and expand markets for pork and pork products by funding promotion, research, and consumer information initiatives.

Further, over the past 10 years the National Pork Board has averaged producer checkoff revenue of \$80.6 million. Even with an estimated \$13.5 million (\$12.3 million of that decrease deriving from reduced domestic assessments and \$1.2 million deriving from reduced importer assessments) reduction in assessment revenue, the total assessment revenue will continue to fall above the last 10-year average assessment revenue.

AMS assumes that the reduction in promotional spending from the new rates will have a negligibly small effect on demand, especially given the still substantial increase in promotion spending above historic levels. For this reason, the costs of the rule will be small as well. The benefits of the rule, however, will be the direct saving to producers of \$13.5 million in reduced assessment payments. Together, AMS assesses that the benefits to this rule change will exceed its costs.

Comments

The proposed rule describing the decrease in rate of assessment of market value of live porcine animals and assessment per pound due on imported pork and pork products was published on July 20, 2022, in the **Federal Register** (87 FR 43222). The 30-day public comment period closed on August 19, 2022. The Department received a total of 3 comments. Two comments did not support the rate decrease but instead recommended switching to plant-based farming or diet. The third comment was submitted by 27 state associations supporting the assessment rate decrease and encouraging the Final Rule be effective January 1, 2023, to allow appropriate time to adjust processes for collecting checkoff funds.

USDA carefully considered the comments and the recommendation of the

Delegate Body and determined that a decrease in the assessment rate would effectuate the purposes of the Act. This action lessens the assessment burden on producers and importers. The effective date of January 1, 2023 gives the Board ample time to communicate this change and will not burden those that remit pork checkoff assessments. This final rule adopts the decrease in the assessment rate from 0.40 percent of market value of porcine animals to 0.35 percent as proposed and decreases the amount of assessment per pound due on imported pork and pork products.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agriculture research, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 1230 as follows:

PART 1230 – PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801-4819.

2. Section 1230.110 is revised to read as follows:

§1230.110 Assessments on imported pork and pork products.

(a) The following Harmonized Tariff Schedule (HTS) categories of imported live porcine animals are subject to assessment at the rate specified.

Table 1 to Paragraph (a)

Live porcine animals	Article description	Assessment
0103.10.0000	Purebred breeding animals	0.35 percent Customs Entered Value.
0103.91.00	Other: Weighing less than 50 kg each.	
0103.91.0010	Weighing less than 7 kg each	0.35 percent Customs Entered Value.
0103.91.0020	Weighing 7 kg or more but less than 23 kg each	0.35 percent Customs Entered Value.

0103.91.0030	Weighing 23 kg or more but less than 50 kg each	0.35 percent Customs Entered Value.
0103.92.00	Weighing 50 kg or more each.	
0103.92.0010	Imported for immediate slaughter	0.35 percent Customs Entered Value.
0103.92.0090	Other	0.35 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Table 2 to Paragraph (b)

Pork and pork products	Article description	Assessment	
		Cents/lb	Cents/kg
0203	Meat of swine, fresh, chilled, or frozen: Fresh or chilled:		
0203.11.0000	Carcasses and half-carcasses	0.15	0.390920
0203.12.1010	Processed hams and cuts thereof, with bone in	0.15	0.390920
0203.12.1020	Processed shoulders and cuts thereof, with bone in	0.15	0.390920
0203.12.9010	Other hams and cuts thereof, with bone in	0.15	0.390920
0203.12.9020	Other shoulders and cuts thereof, with bone in	0.15	0.390920
0203.19.2010	Processed spare ribs	0.18	0.457058
0203.19.2090	Processed other	0.18	0.457058
0203.19.4010	Bellies	0.15	0.390920
0203.19.4090	Other	0.15	0.390920
0203.21.0000	Frozen carcasses and half-carcasses	0.15	0.390920
0203.22.1000	Frozen-processed hams, shoulders, and cuts thereof, with bone in	0.15	0.390920
0203.22.9000	Frozen-other hams, shoulders, and cuts thereof, with bone in	0.15	0.390920
0203.29.2000	Frozen processed other	0.18	0.457058
0203.29.4000	Frozen other: Other	0.15	0.390920
0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled, or frozen:		
0206.30.0000	Of swine, fresh or chilled	0.15	0.390920
0206.41.0000	Of swine, frozen: Livers	0.15	0.390920
0206.49.0000	Of swine, frozen: Other:	0.15	0.390920
0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:		
0210.11.0010	Meat of swine: Hams and cuts thereof, with bone in	0.15	0.390920

0210.11.0020	Meat of swine: Shoulders and cuts thereof, with bone in	0.15	0.390920
0210.12.0020	Meat of swine: Bellies (streaky) and cuts thereof, Bacon	0.15	0.390920
0210.12.0040	Meat of swine: Bellies (streaky) and cuts thereof, Other	0.15	0.390920
0210.19.0010	Meat of swine: Canadian style bacon	0.18	0.457058
0210.19.0090	Meat of Swine: Other	0.18	0.457058
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products:		
1601.00.2010	Pork canned	0.23	0.567288
1601.00.2090	Pork other	0.23	0.567288
1602	Other prepared or preserved meat, meat offal or blood:		
1602.41.2020	Of swine: Boned and cooked and packed in airtight containers holding less than 1 kg	0.25	0.611380
1602.41.2040	Of swine: Other boned and cooked and packed in airtight containers	0.25	0.611380
1602.41.9000	Of swine: Other	0.15	0.390920
1602.42.2020	Of swine: Shoulders and cuts thereof: Boned and cooked and packed in airtight containers holding less than 1 kg	0.25	0.611380
1602.42.2040	Of swine: Shoulders and cuts thereof: Other boned and cooked and packed in airtight containers	0.25	0.611380
1602.42.4000	Of swine: Other shoulders and cuts thereof	0.15	0.390920
1602.49.2000	Of swine: Other, including mixtures: Not containing cereals or vegetables: Boned and cooked and packed in air-tight containers	0.23	0.567288
1602.49.4000	Of swine: Other, including mixtures: Not containing cereals or vegetables: Other	0.18	0.457058
1602.49.9000	Of swine: Other, including mixtures: Other	0.18	0.457058

3. Section 1230.112 is revised to read as follows:

§1230.112 Rate of assessment.

In accordance with §1230.71(d), the rate of assessment shall be 0.35 percent of market value.

Melissa Bailey,

Associate Administrator,

Agricultural Marketing Service.

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